In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 695

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 5, PETITIONER

v.

UNITED STATES OF AMERICA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 9–18) is reported at 398 F. 2d 248. The opinion of the district court is reported at 283 F. Supp. 769.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1968, and a petition for rehearing was denied on September 9, 1968. The petition for a writ of certiorari was filed on October 28, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

327-412—68

STATUTE INVOLVED

The relevant provisions of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, *et seq.*, 42 U.S.C. 2000e *et seq.*, are set forth in the Appendix, *infra*, pp. 7–10.

QUESTION PRESENTED

Whether the Equal Employment Opportunity Commission has jurisdiction to investigate a charge of discriminatory employment practices where the Commission has not served a copy of the charge upon the respondent within 60 days after the filing thereof.

STATEMENT

The Equal Employment Opportunity Commission is an agency of the United States charged with the responsibility of administering Title VII of the Civil Rights Act of 1964, 78 Stat. 241, 253 (42 U.S.C. 2000e *et seq.*), which, *inter alia*, prohibits racial discrimination by labor organizations. Section 706(a) (*infra*, p. 7) authorizes the Commission to investigate charges of unlawful practices.

In connection with any investigation of a charge, the Commission is authorized to issue demands for documentary evidence which are enforceable in the district courts (Section 710(b), *infra*, pp. 9–10). Any individual served with a demand may petition the district court to have it modified or set aside (Section 710(c), *infra*, p. 10).

In the present case, the petitioner union, which had been charged by an individual with discriminatory practices prohibited by Section 703(c), filed

an action pursuant to Section 710(c) in the United States District Court for the Western District of Pennsylvania seeking to set aside the Commission's demand for access to evidence issued on April 12, 1967. The chronology of events prior to the litigation is set forth in the opinion of the court of appeals (Pet. App. 10–12).

The district court held that a charge must be served by the Commission within the statutory filing period set forth in Section 706(d) of the Act (*infra,* p. 8) [1] and, accordingly, set aside the Commission's demand. On appeal, the court of appeals reversed, holding that neither Title VII nor the Commission's procedural regulations impose upon it a specific time limitation for the serving of a charge of unlawful employment practices.

ARGUMENT

Petitioner's present contention is not that the district court was correct (see Pet. App. 15, n. 6), but that Section 706(e) (*infra,* pp. 8–9) requires that charges [2] be served within sixty days after they are filed with the Commission. The essence of petitioner's present position is that the language of Section 706(e), "If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that

[1] That period is 90 days where there is no state or local law regulating unlawful employment practices and 210 days where such a state or local law exists.

[2] The petition does not challenge the holding of the court below that the Commission's investigation in this case is based upon a valid charge.

in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to secure voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought * * *," requires that the Commission initiate and presumably complete its administration of a charge filed under Title VII within sixty days of the filing of the charge. On the expiration of that sixty-day period, the petitioner claims, the Commission loses its authority to proceed with its administration of the case.

The contention that Section 706(e) imposes mandatory time periods upon the Commission for the service of charges or completion of its investigation and conciliation efforts has been consistently rejected. *Blue Bell Boots, Inc., formerly J. W. Carter Co.* v. *EEOC,* 69 LRRM 2009 (M.D. Tenn., No. 5035, July 12, 1968); *Georgia Power Company* v. *EEOC,* 69 LRRM 2017 (N.D. Ga., No. 11858, August 9, 1968). While the question has been decided by a court of appeals only in the instant case, three other courts of appeals have dealt with the significance of the above quoted statutory language. In each case those courts have regarded Section 706(e) as merely establishing a sixty-day period during which a private charging party must exhaust his administrative remedies before he may file a suit in the district court. *Choate* v. *Caterpillar Tractor Co.* (C.A. 7, No. 16700,

decided Oct. 17, 1968); *Johnson* v. *Seaboard Airline Railroad Co.* (C.A. 4, No. 12,155, decided October 24, 1968); *Jenkins* v. *United Gas Co.*, 400 F. 2d 28 (C.A. 5). This view of Section 706(e) is consistent with the holding in the present case that that provision does not prescribe a time period for the completion of the Commission's processes.

The decision of the court below that the Commission does not lose jurisdiction over a case after sixty days is correct. A contrary interpretation of the statute would virtually nullify the legislative purpose of providing a meaningful opportunity for resolution of Title VII disputes through the processes of conciliation under the auspices of the Commission rather than through litigation—charging parties would necessarily be propelled into litigation before the Commission had adequate opportunity to seek to resolve the disputes by means of conciliation. Moreover, in view of the Commission's heavy case load and backlog of pending cases,[3] petitioner's proposed interpretation of Title VII would have the practical effect of drastically frustrating the Commission's processing of cases to conciliation and thereby forcing parties to undertake conciliation or litigation on hastily prepared, incomplete investigations of the merits of the claim.

[3] Recent studies reflect that the time elapsing between the filing of a charge and the completion of the Commission's investigation averages approximately 235 days, and that it takes an additional 150 days for the Commission's decision to issue and another 180 days before the conciliation efforts are completed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

STEPHEN J. POLLAK,
Assistant Attorney General.

DANIEL STEINER,
General Counsel,

RUSSELL SPECTER,
Assistant General Counsel,

DAVID CASHDAN,
Attorney,
Equal Employment Opportunity Commission.

DECEMBER 1968.

APPENDIX

Section 706(a), 42 U.S.C. 2000e–5(a), provides in pertinent part:

> Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. * * *

Section 706(b), 42 U.S.C. 2000e–5(b), provides in pertinent part:

> In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before

> the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. * * *

Section 706(d), 42 U.S.C. 2000e-5(d), provides in pertinent part:

> A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier * * *.

Section 706(e), 42 U.S.C. 2000e-5(e), provides:

> If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged

> unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

Section 709(a), 42 U.S.C. 2000e–8(a) provides:

> In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Section 710(a), 42 U.S.C. 2000e–9(a) provides:

> For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

Section 710(b), 42 U.S.C. 2000e–9(b) provides in pertinent part:

> If the respondent named in a charge filed under section 706 fails or refuses to comply

> with a demand of the Commission for permission to examine or to copy evidence * * * the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission * * *.

Section 710(c), 42 U.S.C. 2000e–9(c) provides in pertinent part:

> Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence * * * such person may file in the district court of the United States * * * a petition for an order of such court modifying or setting aside such demand. * * *

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